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Secretary
Committee on Rules of Practice and Procedures
Administrative Office of United States Courts
Washington, DC 20544

Re. Suggestion to Advisory Committee on Appellate Rules Concerning Federal Rule of
Appellate Procedure 4

Dear Sir/Madam:

I write to suggest slight amendments to Federal Rule of Appellate Procedure 4 to conform it to recent stylistic changes to Federal Rule of Civil Procedure 58.

Federal Rule of Appellate Procedure Rule 4(a)(7) currently provides:

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

- (i) if Federal Rule of Civil Procedure 58(a)(1) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a), or
- (ii) if Federal Rule of Civil Procedure 58(a)(1) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:
 - the judgment or order is set forth on a separate document, or
 - 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a)(1) does not affect the validity of an appeal from that judgment or order.

Fed. R. App. P. 4(a) (emphasis added). Thus, Rule 4(a)(7) repeatedly cross-references the "separate document" requirement of Federal Rule of Civil Procedure 58(a)(1) for purposes of

defining the "entry" of a judgment or order that triggers the time to file a notice of appeal under Rule 4(a)(1).

Effective December 1, 2007, however, Federal Rule of Civil Procedure 58 was amended "as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules." Advisory Committee Notes, 2007 Amendments to Fed. R. Civ. P. 58. One of the stylistic changes the 2007 amendments made to Rule 58 was to move the "separate document" requirement from subsection (a)(1) to subsection (a). As amended, Federal Rule of Civil Procedure 58 provides in relevant part:

Rule 58. Entering Judgment

(a) Separate Document. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion

- (1) for judgment under Rule 50(b);
- (2) to amend or make additional findings of fact under Rule 52(b);
- (3) for attorney's fees under Rule 54;
- (4) for a new trial, or to alter or amend the judgment, under Rule 59; or
- (5) for relief under Rule 60.

(c) Time of Entry. For purposes of these rules, judgment is entered at the following times:

- (1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or
- (2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket

(d) Request for Entry. A party may request that judgment be set out in a separate document as required by Rule 58(a).

Fed. R. Civ. P. 58 (emphasis added). Rule 4(a)(7)'s cross-references to subsection (a)(1) in amended Rule 58 make no sense because subsection (a)(1) now identifies a category of orders (orders disposing of Rule 50(b) motions) not subject to the separate document requirement, which is now found in subsection (a) of amended Rule 58.

In view of the 2007 amendments to Rule 58, I suggest conforming amendments to Rule 4(a)(7) to change the latter's three cross-references to "Federal Rule of Civil Procedure 58(a)(1)" to "Federal Rule of Civil Procedure 58(a)."

Sincerely,

A handwritten signature in black ink, appearing to read "M. Miller Baker". The signature is fluid and cursive, with the first name "M." followed by "Miller" and "Baker".

M. Miller Baker